Planned Building Services, Inc. *and* Local 32B-32J, Service Employees International Union, AFL–CIO and Local 912, United Commercial and Industrial Workers Union, Party in Interest

Local 912, United Commercial and Industrial Workers Union *and* Local 32B-32J, Service Employees International Union, AFL–-CIO and Planned Building Services, Inc., Party in Interest. Cases 2–CA–26215, 2–CA–26345, 2–CB–14476, and 2–CB–14563

September 11, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

On March 15, 1995, Administrative Law Judge Robert T. Snyder issued the attached decision. Planned Building Services, Inc., the Respondent,[1] filed exceptions and a supporting brief.[2]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order and to adopt the recommended Order as modified.

We adopt the judge's conclusion that the Respondent is a successor employer to Ferlin Service Industries and that the Respondent therefore had a duty to recognize and bargain with Local 32B-32J. Contrary to the judge, however, we find that the Respondent was not obligated to bargain with Local 32B-32J prior to setting its initial terms and conditions of employment for the employees.

As the judge found, the Respondent's representatives met with the employees for the first time on October 27, the day before the Respondent took over the maintenance functions at the four buildings involved in this case. The Respondent's representatives told the employees that if they wished to be employed by the Respondent, they should fill out the applications being distributed at the meeting and bring the completed applications back when they started work the next morning. The Respondent's representatives then told the employees that they would receive the same wages that they received from Ferlin, but that the benefits would not be the same.

Applying our recent decision in *Canteen Co.*, 317 NLRB 1052 (1995), we find that the Respondent was free to set the initial terms and conditions on which it would hire Ferlin's employees because the Respondent made a lawful *Spruce Up*[3] announcement. On October 27, during its very first contact with Ferlin's employees, the Respondent both communicated its plan to retain Ferlin's employees and announced that its offer to the employees was based on changed terms and conditions of employment. As in *Spruce Up*, the Respondent stated from the outset that it would be hiring the predecessor's employees pursuant to new terms and, therefore, the Respondent was not a ''perfectly clear'' successor that was obligated to consult with the Union prior to setting initial terms and conditions of employment.[4]

Accordingly, we have modified the judge's conclusions of law, and recommended Order,[5] the notice to reflect our decision.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 6.

''6. By failing and refusing since October 30, 1992, to recognize and bargain with Local 32B-32J, SEIU as the exclusive collective-bargaining representative of its employees in the unit described in paragraph 3, above, and since December 1, 1992, by applying the terms of the collective-bargaining agreement it entered into with Respondent Local 912 to employees in the unit, Re-

[1] Local 912 was also a respondent in the instant case but did not file exceptions to the judge's decision.

[2] The Respondent has filed a motion to reopen the record to receive documents involving a decertification petition in Case 2–RD–1260. The General Counsel opposes the Respondent's motion, but in the alternative, requests that the Board receive an additional piece of correspondence addressed from Region 2 to the Respondent. We grant the motion to reopen the record, and we take administrative notice of the documents and correspondence offered by both the Respondent and the General Counsel concerning Case 2–RD–1260.

[3] 209 NLRB 194 (1974), enfd. on other grounds 529 F.2d 516 (4th Cir. 1975).

[4] Our finding does not affect the judge's conclusions that the Respondent violated the Act by failing and refusing to recognize and bargain with Local 32B-32J and by recognizing and executing a collective-bargaining agreement with Local 912, and we adopt those conclusions in their entirety.

[5] We agree with the judge that it is appropriate to order that the Respondent recognize and bargain with Local 32B-32J, despite the fact that objections and unfair labor practice charges regarding an earlier decertification election were pending at the time the Respondent assumed operations. See *Dresser Industries*, 264 NLRB 1088 (1982). See also *Weather Shield Mfg.*, 292 NLRB 1, 4 fn. 18 (1992). We note that the Respondent cites *NLRB v. New Associates*, 35 F.3d 828 (3d Cir. 1994), for the proposition that an employer has no obligation to bargain while a decertification petition is pending unless the Board discloses the number of employees who supported the decertification petition, and such number is less than a majority. In *New Associates*, the Third Circuit held that it would not follow the Board's decision in *Dresser* in those cases where the Board refuses to disclose to the employer, at the employer's request, the percentage of employees supporting the decertification petition. In this case, there is no evidence that the Respondent, prior to refusing and failing to recognize and bargain with Local 32B-32J, requested, and was refused, information regarding the percentage of employees supporting the decertification petition in Case 2–RD–1260. Therefore, even under the Third Circuit's standard, the Respondent was obligated to bargain with Local 32B-32J. The judge's recommended Order inadvertently omitted a cease-and-desist provision for this issue. We have modified the Order to include this provision.

spondent Planned Building Services, Inc. has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that Planned Building Services, Inc., Fairfield, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for subparagraph A,1(c).

''(c) Failing and refusing to recognize and bargain with Local 32B-32J, Service Employees International Union, AFL–CIO as the exclusive collective-bargaining representative of the unit of building service employees.''

2. Delete subparagraph A,2(b) and reletter the subsequent paragraphs.

3. Substitute the attached notice to employees for that of the administrative law judge.

CHAIRMAN GOULD, dissenting in part.

Contrary to my colleagues, I would find, in agreement with the judge, that the Respondent was obligated to consult with Local 32B-32J prior to setting the initial terms and conditions of employment for the employees. As set forth in my concurrence in *Canteen Co.*, 317 NLRB 1052 (1995), I believe that the Board's decision in *Spruce Up*, 209 NLRB 194 (1974), enfd. on other grounds 529 F.2d 516 (4th Cir. 1975), represents a misreading of the Supreme Court's decision in *NLRB v. Burns International Security Services*, 406 U.S. 272 (1972). The Supreme Court in *Burns*, stated that the test for finding a ''perfectly clear'' successor is whether ''the new employer plans to retain all of the employees in the unit.'' *Burns*, 406 U.S. at 294–295. It is clear from the facts of this case that the Respondent intended to hire its work force from the group of employees working for the predecessor employer. In that regard, I note that the Respondent waited until the day before it assumed operations to approach anyone about working at the four buildings at issue and that the Respondent merely required the ''prospective'' employees to turn in completed applications the next morning when they reported for work. I agree with the judge that the Respondent ''had determined to hire the complement of Ferlin maintenance employees on October 27,'' and that the Respondent, therefore, was obligated to bargain with Local 32B-32J prior to setting its initial terms and conditions of employment and violated Section 8(a)(5) and (1) on October 28 by unilaterally making changes in the existing terms and conditions of employment.

I agree with my colleagues' resolution of all of the other issues in this case.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT assist or contribute support to Local 912, United Commercial and Industrial Workers Union or any other labor organization, by recognizing and bargaining for the purpose of collective argaining with it as the exclusive collective-bargaining representative of our employees unless and until it had been certified as such by a representative by the National Labor Relations Board.

WE WILL NOT maintain or give effect to our collective-bargaining agreement with Local 912 effective December 1, 1992, or any extension, or modification provided, however, that nothing here shall require the withdrawal or elimination or any wage increase or other benefits, terms, or conditions of employment more favorable to employees which may have been established pursuant to such agreement.

WE WILL NOT discriminate against employees by encouraging membership in Local 912 or any other labor organization by discharging employees because they fail to sign dues-deduction authorization cards, or because they fail to pay dues under a union-security clause included in a collective-bargaining agreement with Local 912 or any other labor organization entered into based on recognition accorded at a time when such labor organization did not represent an uncoerced majority of our employees in an appropriate unit.

WE WILL NOT deduct union dues and fees from the wages of employees for Local 912 or any other labor organization under a dues-checkoff clause included in a bargaining agreement with Local 912 or any other labor organization entered into based on recognition accorded at a time when such labor organization did not represent an uncoerced majority of our employees in an appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you in Section 7 of the Act.

WE WILL recognize and, on request, bargain with Local 32B-32J, Service Employees International Union, AFL–CIO as the exclusive bargaining representative of our employees in the following appropriate unit concerning their terms and conditions of

employment and, if an understanding is reached, embody it in a signed agreement:

> All building service employees employed at A.K. Houses (112–126 East 128th Street, New York, N.Y.); 1775 Houses (107–129 East 126th Street and 290–2 Lexington Avenue, New York, N.Y.); 108 Tres Unidos (1680 Madison Avenue and 22 East 112th Street, New York, N.Y.); and M.S. Houses (107–123 East 129th Street, New York, N.Y.), excluding all office clerical employees, and guards, professional employees and supervisors as defined in the Act.

WE WILL jointly and severally with Local 912, United Commercial and Industrial Workers Union reimburse all past and present employees for all initiation fees and dues paid by such employees to Local 912, United Commercial and Industrial Workers Union, pursuant to our collective-bargaining agreement with Local 912, United Commercial and Industrial Workers Union, effective December 1, 1992, plus interest.

WE WILL jointly and severally with Local 912, United Commercial and Industrial Workers Union make whole Jeffrey Bourne and Frank Graham for any loss of earnings and benefits they may have suffered by reason of our unlawful discrimination against them, plus interest.

PLANNED BUILDING SERVICES, INC.

Richard L. DeSteno, Esq., for the General Counsel.
Jed L. Marcus, Esq. and *Wanda L. Ellert, Esq. (Grotta, Glassman & Hoffman, P.A.)*, for the Respondent Employer.
Bianca M. Worden, Esq. (McCarthy, McCarthy & DeMartin, P.C.), for the Respondent Union.
Ira S. Sturm, Esq. (Manning, Raab, Dealy & Sturm, Esqs.), for the Charging Union.

DECISION

STATEMENT OF THE CASE

ROBERT T. SNYDER, Administrative Law Judge. This case was tried before me on February 7 to 10, 1994, in New York, New York.

The consolidated complaint alleges that Planned Building Services, Inc. (PBS) refused to recognize and bargain in good faith with Local 32-BJ; made unilateral changes in terms and conditions of employment of unit employees; granted recognition to, and entered a collective-bargaining agreement with, Local 912, United Commercial and Industrial Workers Union (Local 912) at a time when Local 912 did not represent an uncoerced majority of PBS' employees; deducted union dues for Local 912 pursuant to union-security and dues-checkoff clauses contained in the agreement; and discharged two named employees because they refused to sign dues-checkoff authorization cards for Local 912, and/or because they refused to pay dues to Local 912 pursuant to the alleged unlawful union-security clause, in violation of Section 8(a)(5), (2), (3), and (1) of the Act. The consolidated complaint also alleges that Local 912 coerced employees into signing its authorization cards; accepted recognition from, and entered the agreement with, PBS at a time when it did not represent an uncoerced majority of PBS' employees; accepted dues from employees pursuant to union-security and dues-deduction clauses contained in the agreement; and caused PBS to discharge the two employees because they refused to sign dues-checkoff authorizations and/or because they refused to pay dues to Local 912 pursuant to an unlawful union-security clause, in violation of Section 8(b)(1)(A) and (2) of the Act.

All parties were provided full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Counsel for the General Counsel and counsel for the Respondent PBS have each filed posttrial briefs and they have been carefully considered. On the entire record in the case, including my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent PBS, a domestic corporation, with an office and place of business at 167 Fairfield Road, Fairfield, New Jersey, has been engaged in the business of providing maintenance services for various residential apartment buildings in New York and New Jersey, including residential apartment buildings known as and located at the following addresses: A. K. Houses (112–126 East 128th Street, New York, N.Y.); 1775 Houses (107–129 126th Street and 290–2 Lexington Avenue, New York, N.Y.); Los Tres Unidos (1680 Madison Avenue and 22 East 112th Street, New York, N.Y.); and 22 East 112th Street, New York, N.Y.); and M. S. Houses (107–123 East 129th Street, New York, N.Y.) (collectively called Respondent PBS' facilities or Manhattan facilities). Annually, in the course and conduct of its above-described business operations, Respondent PBS derives gross revenues in excess of $500,000; purchases and receives at its New York facilities products, goods, and materials valued in excess of $5000; and performs services valued in excess of $50,000 in States other than the State of New York. Respondent PBS admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondents admit, and I find that Respondent Local 912 and Local 32-BJ are each a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Until October 28, 1992,[1] and for a number of years prior thereto, Ferlin Service Industries d/b/a Riverside Maintenance Corp. (Ferlin) held the contract to supply maintenance services to the residential apartment buildings comprising A. K. Houses, 1775 Houses, Los Tres Unidos, and M. S. Houses as well as to five other sets of buildings located at various locations in the five boroughs of New York City, New Jersey, and Long Island. Ferlin supplied doorman services as

[1] All dates refer to 1992 unless otherwise indicated.

well at some of these buildings. The total complement of building service employees at these nine sets of buildings in October 1991 was approximately 163. They comprised a bargaining unit represented by Local 32B. The most recent collective-bargaining agreement covering them between Ferlin and Local 32B ran for 2 years from January 1, 1987, to December 31, 1989, and contained an automatic renewal clause, continuing the agreement in full force and effect until a successor agreement shall have been executed.

On October 17, 1991, an election was conducted pursuant to a decertification petition filed with the Region by a Ferlin unit employee in Case 2–RD–1260. Participating in the election were Locals 32-BJ and 912. A revised tally of ballots shows Local 32B received 71 votes, and Local 912 received 54.[2] Local 912's filing of an unfair labor practice charge in Case 2–CA–25365 and timely objections to the conduct of the election resulted in issuance of an order consolidating a complaint and objections for hearing before Administrative Law Judge Howard H. Edelman. In a decision he issued on February 24, 1994, Judge Edelman concluded that Respondent Ferlin had threatened its employees with discharge and unspecified reprisals if they continued their activities on behalf of Local 912, in violation of Section 8(a)(1) of the Act and recommended that this conduct, comprising an objection filed by Local 912, warranted setting aside the election. By Order and Direction of Second Election, which issued on April 12, 1994, after initially noting that no exceptions had been filed with it to Judge Edelman's decision, Executive Secretary John C. Truesdale, by direction of the Board, adopted the findings and conclusions of Judge Edelman, ordered Respondent Ferlin to cease and desist its unlawful conduct in accordance with the judge's recommended Order, further ordered the Union's objection sustained and the election set aside, and directed a second election in the Ferlin building service employees bargaining unit. That election has not been conducted. Well prior thereto, on October 28, 1992, PBS succeeded Ferlin as the contractor supplying building maintenance functions at the four Manhattan facilities, as well at the Woodycrest building located in the Bronx and separately represented by Local 32E, SEIU.

B. *The Facts Regarding PBS's Status as Successor Employer to Ferlin*

There is no dispute that on October 28, when PBS took over the building maintenance function at the 4 Manhattan facilities, all of its employees, 18 in number, had until the prior day been employees of Ferlin at the same locations. Thus, at a meeting called of the Ferlin employees on October 27, by the new management, these employees were offered jobs, provided employment applications, and told to bring them in and be prepared to start work the next day. All of them did so, were put to work by PBS, and constituted all of the building service employees employed by PBS.

Doorman service had been provided by Ferlin under its service agreement at A. K. Houses and 1775 Houses, but not at Los Tres Unidos or M. S. Houses which employed an outside security service. The doorman at A. K. and 1775 on Ferlin's final payroll totalled 17, but it included 4 standby individuals who were called in to substitute for absent or vacationing employees as needed, were not on a regular schedule, and were thus excluded from the Ferlin-Local 32B bargaining unit as not being within the group of full-time or regular part-time employees covered under that agreement either by its terms, the practices of the parties (Tr. 74) or the unit description appearing in the Regional Director's Direction of Election in Case 2–RD–1260.

As for PBS, it employed none of the doorman when it took over the building maintenance services. The owner's managing agent arranged with Argo Security Services to supply security personnel for the PBS facilities, replacing the previously employed doormen.

The facts show that in addition to PBS hiring and thus retaining without any break in service the prior maintenance staff, including the superintendents for each of the four sets of buildings, employee building assignments, shifts and responsibilities, the equipment and tools, including mops, buckets, and vacuum cleaners, all remained the same. Respondent PBS concedes as much, but nonetheless disputes its alleged status as successor because of the change in scope and composition of the bargaining unit, with its reduction from nine to four sets of buildings and the elimination of the doormen. This issue shall be dealt with, infra.

C. *Local 32-BJ's Demand for Recognition Rejected by PBS*

Kevin McCulloch, assistant to the president of Local 32-BJ, testified that early in September he heard from a third party that the maintenance contracts in certain Ferlin buildings, the Manhattan facilities, had expired and were out for bid. Since Local 32-BJ had a current contract and ongoing dispute with Ferlin, the current maintenance contractor, he sought to learn the facts regarding the identity of the successor and to arrange for current employees to apply for employment, but was unsuccessful until October 30, when he learned that PBS had taken over and an Arthur Birnbaum was handling the buildings for them.

McCulloch reached Birnbaum on October 30, identified himself and his affiliation, told him Local 32-BJ had recently won an election and was the representative of the employees in the four buildings in question which Birnbaum confirmed he had taken over. McCulloch said Local 32-BJ represented the workers and wanted to negotiate a contract. Birnbaum explained that PBS had commenced working at the building on October 28, and shortly afterward an individual from Local 912 had come to him claiming to represent the workers. After calling his boss, Michael Francis, he was instructed to recognize Local 912. McCulloch also learned that the recognition had been placed in writing.

McCulloch then asked Birnbaum not to sign a contract, because Local 32-BJ represented the people and at minimum, the NLRB should decide who would represent the workers. McCulloch subsequently sent a mailgram on October 30 confirming the conversation. In it McCulloch made written requests for recognition based on the hiring of the former employees and that Birnbaum contact him to commence negotiations. By letter dated November 4, which McCulloch did not receive until a week later because it had been mis-ad-

[2] In his Decision and Direction of Election ordering the election, the Regional Director excluded from the bargaining unit for purposes of the election those employees in Bronx facilities who are represented by Local 32E, SEIU, among other employees, who were also excluded from the current collective-bargaining agreement. One of the Bronx locations is known as Woodycrest.

dressed, Birnbaum represented that PBS had voluntarily recognized Local 912's collective-bargaining agent for the referenced buildings on presentation of union authorization cards signed by a majority of their employees after commencing operations. As a consequence, PBS never recognized Local 32-BJ as bargaining representative for the employees in question.

During his cross-examination McCulloch acknowledged that when he spoke to Birnbaum he had asked for recognition for the building service employees in the subject buildings and did not know at the time that the doormen had not been hired.

D. *The Facts Regarding Local 912's Employee Solicitations, Its Recognition by PBS and Entry into and Enforcement of a Bargaining Agreement with PBS*

Counsel for the General Counsel produced a number of employee witnesses who testified about their interaction with Local 912.

Jared McNeil testified that he began work for Ferlin at A. R. Houses as a handyman in February 1988. He was then represented by Local 32B. In September or early October, he was among 15 or 16 employees at the 4 previously described facilities who gathered in A. K.'s community room and were addressed by a Vinny, later identified as Vincent Sombrero, president of Local 966, IBT. Vinny told them that the new company that was coming in is not recognizing 32-BJ and ''if we wanted to keep our jobs, we got to sign these cards right now.'' Cards were distributed, McNeil and other employees signed them and returned them to Vinny. The Union named on the card was Local 912. McNeil signed his card on October 1.

Sometime before the takeover by PBS, another meeting of employees was held at the same location, this time addressed by Randy Tucker, president of Local 912. Tucker solicited employee demands for inclusion in a contract with the new employer. Employees told him what they wanted for sick time, sick days, working hours, breaktime, and vacation. He also told them that ''Local 32-BJ is not being recognized by this company and if you want to keep your jobs, sign these cards.'' Everybody present signed the cards and Tucker took them away.

On October 28, Art, later identified as Arthur Birnbaum, regional vice president for PBS, gathered the employees and told them that PBS is now taking over the building and they recognize 912 as our union and he said everything we have now is going to stay the same. Two other persons McNeil could not identify were present with Art. McNeil later placed Tucker as being present.

On cross-examination, McNeil admitted he had been fired by PBS for absenteeism. His father, Elijah McNeil, had been a security employee for Ferlin, and is now an employee of PBS. When asked if Vinny at the meeting at which he spoke to employees indicated that if you didn't sign the card, you would not become employed by PBS, McNeil said ''In a way he did.'' At the time, McNeil acknowledged, there was no indication as to the identity of the new employer. When now pressed as to why he signed the Local 912 card, McNeil responded he did so to keep his job. When then asked if he did it because of Vinny's threat McNeil replied, inter alia, ''if you want to call it a threat, call it a threat; I call it an ultimatum. If I don't sign this card, I will be without a job, I'm going to sign this card.''

McNeil also now agreed that the meeting with Arthur Birnbaum was held on October 27 and not October 28, and that he received an employment application then and was told if he wanted a job to bring the application back the next day. But McNeil disputed that Birnbaum told the assembled Ferlin employees that other than wages, the benefits would not be the same. McNeil insisted that Birnbaum said all things would be the same.

McNeil later acknowledged signing an employment application, but could not recall receiving one, and was unsure if there was a meeting on October 27 where he received it. At the meeting, McNeil agreed Birnbaum had two other people with him and that it was held in the 1775 House community room.

As to the meeting with Tucker, McNeil now said it was held on October 27 and that he had initially reported to DeSteno of the Region, that he had no recollection of what, if anything Tucker said to the employees about keeping their jobs. (Tr. 107.) Under further cross-examination however, McNeil repeated what he had earlier testified to on direct, that Tucker told the employees ''32-BJ is not recognizing you, if you want to keep your jobs, sign this card.'' He reiterated that nobody told him he was going to be fired. (Tr. 111.) Under cross-examination by Local 912 counsel, McNeil testified he had first learned of Vinny's affiliation with Local 966 from a fellow employee, Esau Champagne, since deceased, who told him a guy from the Teamsters Union is going to try to get another union in, something to better ourselves.

McNeil remained firm that Vinny told the employees if you want to keep your jobs, sign these cards. But McNeil denied that Tucker was present at this meeting.

Another employee, Frank Albert Graham, testified that he, too, had been employed by Ferlin as a porter at 1775 Houses and had attended a meeting on October 27 addressed by Art who told the 15 to 20 assembled employees that he was from PBS which was taking over. Art told them nobody is going to lose their job, everything remains the same, and PBS is recognizing 912.

At a later meeting the same day, at A. K. Houses, Randy Tucker told the employees we're going to get a nice contract, ''we're going to negotiate and see what happens.'' Tucker distributed payroll deduction and signup cards for Local 912.

In mid-January, he and fellow employee Jeffrey Bourne went to the office at A. K. Houses, where they met Building Superintendent Sam Rodriguez and Randy Tucker. The two employees asked for and received payroll deduction and medical cards. Neither signed them. Tucker said he would be back the following day to pick them up, but he did not return.

On Tuesday, February 2, 1993, at around 11:30 a.m. he and Bourne were called to the office at A. K. Houses. When they arrived Superintendent Sam Rodriguez, Williams, another superintendent, and Bess, the 912 shop steward, were present. Rodriguez said he just got off the phone with Art and that 912 ''didn't recognize us because we didn't fill out the payroll deduction cards, that we had to punch our cards and go home.'' Abraham and Bourne told Rodriguez to call Randy and find out what was going on; ''they didn't refuse to pay dues, they just didn't want to fill out no [sic] cards.''

The employees went with Rodriguez to a telephone outside the office where Rodriguez attempted, without success, to reach Tucker whose telephone had a recorded message. Graham and Bourne then left work at 12:30 p.m. although their normal quitting time was 4 p.m. Graham was scheduled to work the following day Wednesday, Thursday, and Sunday. He did not. On Sunday, February 7, he received a call from Bourne who said he had talked to the shop steward and Randy said to go back to work on Monday, February 8.

He and Bourne returned to work on February 8. On February 9, Steward Bess told Graham it was all right to pay his dues through the mail, but he had 5 days to pay or be terminated. Graham subsequently forwarded a $60 money order to Local 912, covering 2 months' dues. Previously, Graham had informed Bess that he was willing to pay dues but by money order or check. On one prior occasion at a meeting attended by Bess, Tucker said its the law, you have to fill out the payroll deduction card. When Bess asked what law, Tucker said he was not sure, but would get back to him about it.

Graham never turned in a signed, dues-payroll deduction card to Local 912, although he had received a number of them from Tucker and had even signed, but not dated, a few of them.

Respondent produced a document dated May 3, 1993, and admittedly signed by Graham and PBS Supervisor Mark Wilson, in which Graham agreed, in consideration of receiving 3-1/2-days' backpay, to relinquish any claims against PBS. Graham denied ever receiving any backpay from PBS, PBS failed to produce any canceled check or other evidence of payment, and Respondent counsel denied the document was offered to prove that Graham compromised his claim, but only to show Graham was not a credible witness. The document, although received in evidence, fails to undermine Graham's credibility.

Another employee, Ronald McKinney, testified that after having worked since 1988 for Ferlin as a porter at M. S. Houses and then A. K. Houses, and then having continued as an employee for PBS, he was fired in December. He returned to the building in January 1993 to discuss his discharge with Randy Tucker. After a private meeting with Tucker, during which Tucker began a little argument, he attended a meeting Tucker held with 10 or more employees from PBS' facilities at A. K. Houses. The contract terms regarding sick days was being discussed when McKinney complained that Tucker owed him some sick time and also discussed his dismissal. At this point Tucker stated that anybody who signed a card with 32B and J would lose their job. Apparently the argument between McKinney and Tucker continued at the meeting, with McKinney saying his discharge was unfair and Tucker agreeing but failing to indicate he would or could do anything about it.

During his cross-examination, McKinney stated that among other reasons for his discharge he had been charged with being late. But he also testified that at his January meeting with Tucker, also attended by Sam Rodriguez, Rodriguez said that if PBS rehired him, he, Rodriguez would leave. Rodriguez also told Randy that he would show a way to really get rid of McKinney. It was McKinney's view that Tucker didn't file a grievance for him because of Rodriguez' position.

On cross-examination, McKinney also expanded on the discussion Tucker had at the meeting with the 10 employees. McNeil, Graham, and Bourne were among the employees present. They were complaining about why the union dues had to be automatically deducted from their paycheck when they could pay it quarterly as they had done when they were members of Local 32-BJ. At one point Frank Graham said they wanted to sign for 32B and J, they didn't want any deductions out of their check automatically. Bess, also present, objected that the deduction from pay was unfair. It was in the context of this discussion that Tucker said, ''If you sign Local 32-BJ cards you can lose your job, because they don't want you in the building.'' Tucker also said the Company had to deduct the dues, by law it was automatic, but when the employees objected he said he'd look into it.

A subsequent unfair labor practice charge McKinney filed against PBS and Local 912 growing out of his discharge was dismissed for lack of merit. Under further questioning McKinney acknowledged that because of illness he had only worked about 30 days when he was fired, and was thus still a probationary employee excluded from the grievance article.

McKinney also explained that he, along with all employees present, signed Local 912 authorization or membership cards at a meeting Tucker held with employees in November, just before Thanksgiving.

Jeffrey Bourne testified that he had been a porter who began for Ferlin in 1989. He was among the 18 maintenance workers who became PBS employees on October 28. But before that, on October 1, Vinny held a meeting with approximately 15 employees from the facilities at A. K. Houses Community Center. Vinny identified himself, said he was from Local 912, and told the employees that ''the new company coming in is not going to recognize 32B and J. They are going to recognize 912. And if you don't sign this card you'll be terminated.'' Vinny distributed Local 912 cards at this meeting, some employees signed them, and returned them to Vinny. Vinny also said a new company, of Hasidic Jews, will fire you and get cheaper labor if you don't join the Union.

According to Bourne, early on October 28 Art spoke to the employees. He said they had a new company, we are taking over, and everything remains the same. The new union will be Local 912. Later on October 28, at noon, Vinny addressed 15 employees at the A. K. Houses Community Center. He said, ''If you don't sign with Local 912 PBS will not recognize you as a member. You'll be fired.'' Local 912 cards were also distributed and most signed. Tucker was present and also spoke. He told employees we are going to get you a better contract than 32-BJ.

On or about December 10, in the A. K. Community room Sam Rodriguez distributed payroll-deduction cards for Local 912 to about 15 assembled employees. Randy Tucker was also present. Rodriguez said, ''If you don't sign this card the Union ain't [sic] going to recognize you and the Company. You'll be fired.'' Bourne never signed such a card.

Again, on January 28, 1993, Bourne, Rodriguez and Tucker were present in Rodriguez' office off of the A. K. Houses Community room when Tucker informed Bourne that ''this is the law, you must sign the card, you can't pay yourself.'' Bourne replied he had the right to pay his own union dues if he wanted by money order and ''you give me a receipt.'' Tucker replied, ''No, this is the law.'' (Tr. 191.)

On February 2, 1993, Bourne and Graham were called to Rodriguez' office. Besides Rodriguez, others present were Shop Steward Bess and Superintendent Daryl Williams. Rodriguez said he just got off the phone with Art and Art and Tucker just had a meeting about us. They said Bourne and Graham are no longer members of the Union because they did not sign a deductible card and they must be terminated. Bourne responded, ''Why didn't Tucker come here himself and tell me so we can talk and I pay him my own union dues myself by money order.'' Rodriguez said he didn't know why.

Bourne corroborates Graham that they asked Rodriguez to call Tucker, who did so without success. Both employees left work that day at about 12:30 p.m. Bourne was out on two more workdays, Friday and Saturday. Like Graham, Bourne returned to work on Monday, February 8, after Bess told them to do so and gave them a deadline of the 10th of each month to pay their union dues themselves by money order. Between February 2 and 7 Bourne kept asking Rodriguez if he ever reached Tucker. Rodriguez passed along a message from Art that Bourne had to take it to the Union.

During his cross-examination by Respondent, PBS Counsel Bourne agreed that his December 15 pretrial affidavit did not contain any reference to Vinny mentioning Hasidic Jews or employee terminations. Neither does it contain any reference to Rodriguez' December 10 company threat to fire Bourne for not signing a payroll deduction card. A later affidavit of Bourne's describes Rodriguez as responding on January 28, 1993, to Bourne's claim he pay the dues himself with the statement, ''suit yourself'' or ''that's up to you.''

When pressed to describe the union delegate who addressed employees on October 28, Bourne could not describe the individual, nor could he distinguish between Vinny and Randy Tucker, whether they were the same or different persons.

During his redirect examinations by counsel for the General Counsel and Charging Union Counsel Bourne did clarify that the employee meetings in early and late October for Local 912 were held by Vinny, not Randy, and he did identify Randy Tucker who was present in the courtroom. Bourne also was refreshed that in his affidavit he did describe Vinny as telling employees at the October 1 meeting that if they didn't sign with Local 912 they won't have a job with the building and Local 32-BJ was not let back into the building. These statements are consistent with his direct testimony. After telling them he was from Local 912, Bourne now added that Vinny also told employees that if they stayed in Local 912 for 1 year they could then go over to Local 966 after a year.

A final employee witness called by the General Counsel, Franklin Eastman, corroborated other employee witnesses regarding Vinny's threatening statements made to employees at the October 1 meeting. Eastman knew Vinny through a friend who worked at 1990 Lexington Avenue where Local 966 Teamsters had a contract. Eastman estimated that 40 employees were present from the Manhattan facilities as well as Woodycrest. Tucker was present but did not speak. By this I understood Eastman to mean that Tucker did not address the assembled persons.

On October 1, Vinny told them he knows who was contractor for the buildings and who would be the new owners. The buildings were bought by Hasidic Jews. He knew for a fact they would not do any business with Local 32-BJ. If the employees did not sign up with Local 912 they would be out of a job. The Company would remove everybody that is working there and bring in their own people. He said he knew the cleaning company was from New Jersey, he has a contract with them in New Jersey, and named them as Planned Building Services. Vinny also handed out Local 912 authorization and dues-deduction cards and Eastman saw a majority of the attendees sign them.

Bess asked a question about various funds and Eastman himself asked what was going to happen to their seniority and vacation time. Vinny assured them they were not going to lose any of those things. Vinny added Local 32-B would only collect their money and do nothing for them. PBS would not negotiate with Local 32-BJ and if we were going to go with Local 32-BJ we would be out of a job.

According to Eastman, Tucker held a meeting with the PBS employees a few days after the takeover. Again, about 40 employees were present in the A. K. Community room. Two other men were with him. Bourne asked about paying dues. Tucker told him the dues had to come out of his paycheck, he could not pay by money order. Eastman asked about their health plan and legal fund. Tucker said they were going to negotiate a better contract than the one that 32-BJ would give them. He also said if they were seen speaking with anyone from Local 32-BJ they could be suspended or kicked out of the company. He also said that if they gave statements to the Labor Board they will find out about it and we can get into trouble for it. Tucker also handed out Local 912 cards, including payroll-deduction authorizations to employees who had missed the earlier meeting.

Eastman also attended a meeting held by Art when PBS took over. He handed out employment applications and told the employees the company recognized Local 912 as the new union.

On or about January 27, 1993, Eastman was present when Tucker spoke with Bourne and Graham in the lobby of A. K. Houses. Bourne said he wanted 32-BJ and Tucker told him ''forget about 32-BJ, they are not going to come back here and if you don't sign the cards and if you don't deal with us you'll be out of a job.''

About a week or two later, Eastman was in Rodriguez' office waiting to collect supplies to go back to M. S. Houses when he heard Rodriguez tell Bourne and Graham he got a call from the office in New Jersey and they said to punch them out and they no longer work for PBS. Bourne later told him he was going to the Labor Board.

During his cross-examination, Eastman testified that on October 1 Vinny made clear that if the employees did not sign with Local 912 they would be in trouble with PBS, the maintenance company. A statement from Eastman's pretrial affidavit was also read into the record. In it, Eastman stated, and reaffirmed at the trial, that Vinny told the employees ''I can guarantee you if you go to Local 32-BJ we would lose our jobs because Local 32-B, 32-J does not care about the employees. As all they care about is collecting their money.'' It was at this meeting that Vinny introduced the employees to Randy Tucker.

Eastman now agreed that he and other members of the staff met with Art Birnbaum for the first time on the afternoon of October 27, the day before PBS took over. Present were also two other representatives from PBS, Willie

McDuffy and John Ganley. The employees were given employment applications and told that if they wanted to work they should fill them out and return the next morning. No union representatives were present.

Eastman recalled that while Art Birnbaum said he would keep their wages the same, about the benefits ''he said everything starts over new; we start over fresh that day.'' Eastman also agreed that no one from PBS told employees they would be fired for signing a card for Local 32-BJ or if they didn't sign for Local 912, or they would refuse to bargain with 32-BJ. All of these threats came only from Local 912. As for Vinny, Eastman did not see him back at the Manhattan facilities since 1992. At the early October meeting, among other things, Vinny said ''I'm not even supposed to be here. Randy Tucker is supposed to be here and starting tomorrow you won't be dealing with me, you'll be dealing with Randy Tucker.''

In its defense, the Respondent Union called Randy Tucker. At the time of his testimony he had been Local 912's president for more than 2 years. Tucker testified he became familiar with the employees of the nine sets of buildings maintained by Ferlin from his involvement in the decertification proceeding. He attended the meeting held on October 1, as did Vincent Sombrotto, president of Local 966 Teamsters. Vinny was there to introduce Tucker to the people in this group, apparently meaning the Ferlin employees, whose employer would shortly be replaced by a new maintenance contractor. Present were 15 to 20 employees. Vinny introduced him as president of Local 912. Tucker was not exactly sure what Vinny said to the assembled employees because he was busy speaking to employees in the crowd. For the same reason Tucker could not recall what Vinny said in exchanges with employees.

Tucker was asked questions while he moved around among the employees. When asked about the new company, when it was taking over and the effect on jobs, Tucker could only respond he didn't know the name or when it was coming in, or the impact on jobs. Local 912 would represent them to the best of its ability.

Tucker distributed cards on October 1 and a few, including Bourne and Graham, didn't give them back. He knew they were 32-B guys all along; they also might have not signed the decertification petition. He learned they had stated they weren't signing with Local 912. On October 1, Bourne had asked him about becoming a handyman and mentioned 32-B having a program to become one. Tucker told him, ''You know 32-B's number, if they wanted to represent you, don't you think they would come here.''

Tucker learned the evening of October 27 that the new company was starting the next day. On the morning of October 28 he met with a group of the maintenance employees, secured a few more signed membership cards, and informed them he would ask for recognition. Tucker sought out Art Birnbaum who was present at the site, identified himself, and said he had a majority of your people and showed Birnbaum his cards. All of them had been secured on or after October 1. Birnbaum compared the signatures on the cards against the signed employment applications the employees had turned in earlier that morning and saying he had no authority to grant recognition, he left to talk to his boss. After 15 to 20 minutes Birnbaum returned, said his boss said it was okay to sign the recognition agreement and he and Tucker then signed the document which Tucker produced. In the agreement dated October 28, the parties agree Local 912 represents a majority of the employees, PBS recognizes the Union as sole and exclusive bargaining representative for all full- and regular part-time employees excluding everyone but maintenance, and the parties agree to meet early and negotiate an agreement.

On November 15 or 16, Tucker next met with approximately 15 to 20 employees. Contract proposals were discussed and consensus was reached on the demands to make for terms to be included in an agreement. On December 1, accompanied by a small employee negotiating committee Tucker met with Birnbaum and Michael Francis, another PBS executive, and negotiated a collective-bargaining agreement which was executed by them and submitted to and ratified by a majority of some 20 employees attending a union meeting later the same day. The agreement contains a union-security clause requiring unit employees to become and remain members of the Union on the 31st day following actual beginning of work, the effective date of the agreement (December 1) or its execution date, whichever is later. It includes language that ''the Employer will not be requested to discharge an employee for reasons other than such employee's failure to tender the periodic dues and initiation fees . . . uniformly requested as a condition of acquiring or retaining membership in the Union.'' The agreement also contains a [dues-]checkoff clause requiring the Employer, on receipt of a written authorization signed by an employee, with certain limitation not here germane, to deduct membership dues and initiation fees from the employee's wages on the first payday of every month and remit same to the Union by the 20th of the same month.

Tucker spoke to employees about signing the dues-checkoff cards which were distributed about a week later. While some expressed concern, Bess, Bourne, and Eastman said they were not familiar with it and they didn't want to sign the card. Tucker told them when they ratified the contract there is a clause in it we went over, that says ''check off'' which means you are willing to have the checkoff. Bourne, in particular, told Tucker he wasn't signing the Local 912 card. He did not want to be a member of Local 912 and he wasn't going to pay the dues. He also said he was getting another job at a 32-B location. He never submitted a dues-checkoff card. Neither did Frank Graham. Aside from these two employees dues were deducted from the pay of all other employees and remitted to Local 912, starting with payroll period ending March 5, 1993, and continuing to at least the close of hearing.

Tucker testified he received expressions of concern from some employees about Bourne and Graham not paying dues out of 20 employees. Tucker had a conversation with Art Birnbaum in which he discussed that it is a part of the contract that they have to sign checkoff cards. They agreed to the contract and the checkoff is in the contract. Tucker now indicated he had conversations with both Graham and Bourne about the matter. Bourne told him he wanted to pay his dues on his own, and Tucker said he didn't think he could do that but he would check. Tucker spoke to his attorney, then informed Birnbaum that the two employees were not members of his union in good standing, and thus were not allowed to be on the jobsite, and in Tucker's words ''obviously they were terminated.'' (Tr. 285.)

Tucker subsequently learned that he had received erroneous advice from his attorney that the employees could not pay their own dues but had to sign checkoff cards. Tucker later received other advice from another attorney in the law firm representing Local 912 that the two employees could not be terminated if they paid their dues themselves by a certain day of the month and they had to have a letter sent to them explaining this. Tucker informed Birnbaum that the attorneys had made a mistake and they had to be reinstated and had until the 10th of the month to pay their own dues by money order. Birnbaum said the employees would be reinstated.

Tucker denied that he ever threatened or heard anyone else threaten any employees that if they did not sign either authorization or dues-deduction cards for Local 912 they would lose their jobs. Neither did he threaten anyone if he went to the Labor Board he would be fired.

Tucker acknowledged that Bourne did sign a Local 912 authorization card on October 1. He never asked for it back but clearly expressed his dislike for 912.

During his cross-examination Tucker stated he could not recall how Vinny happened to come to a meeting with Ferlin employees which he attended as a Local 912 representative. Early in his examination he explained that he had become involved in the decertification effort among Ferlin employees through an employee at a building in Harlem whose employees were represented by the Teamsters Local 966 and Vinny Sombrotto. He and Vinny had become friends and socialized together. He went on that Vinny brought him to the October 1 meeting and introduced him—a statement that directly contradicted his apparent lack of recollection of any arrangement between them to attend the October 1 meeting.

Tucker's testimony continued in the same disconcerting and conflicting vein. He testified at one point that Vinny had helped him out before plenty of times but denied that on this occasion he was there to assist him in organizing. Before denying Vinny's assistance, Tucker, in typical fashion, became evasive and avoided answering direct questions regarding Vinny's role, answering such direct questions with evasive questions of his own. Tucker amazingly even denied that Vinny spoke about Local 912 at the October 1 meeting, and then said he was not listening to Sombrotto and could not recall any remarks he made after greeting the attendees. Tucker's testimony in general was designed to obfuscate, consistently evading direct answers, fencing with the questioner, and internally inconsistent, and is not credited insofar as it was intended to diminish Sombretto's role in assisting Local 912 and in influencing employee sentiment in favor of Local 912 and insofar as it was intended to contradict the multiple employee witnesses who attributed to Sombretto and to himself threats of discharge and other unspecified reprisals to employees if they did not sign cards for Local 912. Significantly, Sombrotto, alleged in the complaint as an agent of Local 912, was not called to testify by either Respondent. I draw the inference that if he had been called, his testimony would not have aided the defense.

Tucker did acknowledge that Vinny introduced him to various Ferlin employees when it became apparent to those employees involved in the decertification effort that Local 966, Teamsters could not represent them because of its membership in the AFL–CIO and commitment to its no-raiding pact. At the time of the decertification election in October 1991 Local 912 had no contracts, but a year later it had maybe 100 collective-bargaining agreements.

Tucker was meeting with Ferlin employees on October 21 to organize them and to obtain their support in anticipation of a change in ownership of the maintenance operation at the Ferlin buildings. Local 912 cards were distributed that day, and no one, including Vinny, was seeking support for Local 966, by distributing cards or by any other means. In his pretrial affidavit which Tucker was obliged to acknowledge but which he did not recall, he stated that Vincent was the main speaker to the employees and he, Tucker, was standing at the door talking to employees as they entered and exited the room. I credit these statements over Tucker's failure and refusal to adopt them. See Rule 801(d)(1), FRE, and *Fun Connection & Juice Time*, 302 NLRB 740 (1991), and cases cited at 748.

Before PBS took over Tucker held another meeting attended by 10 of 12 Ferlin employees. At this meeting, Tucker collected eight or nine membership or pledge cards from Superintendent Sam Rodriguez. After December 1, Tucker started distributing dues-deduction cards. Employees Bourne and Graham, among others initially refused to sign them. Bourne, in particular, refused to sign this card many times, telling Tucker that he didn't want to be involved with 912 at all, and that if he was going to be involved with 912 he would pay his dues himself. Tucker believed Bourne mentioned paying by check but he also might have said he would want a receipt. Tucker's response to Bourne, at least several times, was that as a majority of votes passed for the checkoff clause of the contract, he had to sign a checkoff card because that's what a majority had agreed to.

With respect to the events of February 2, 1993, by this time only Bourne and Graham had not signed dues-checkoff authorizations. In a conversation around this time, probably during their February 2 talk, Tucker informed Birnbaum of this fact when Birnbaum had questioned Tucker about why their names did not appear on the monthly bill for dues remittances from Local 912. In his conversation with Art Birnbaum on February 2, Tucker in essence told Birnbaum that as Bourne and Graham hadn't signed the checkoff card they were not members of 912 in good standing. They did not pay any dues. As Tucker described it they hadn't sent any money at that time, and he probably did say that they should be terminated, that they were not in his Union. Tucker did not inform Birnbaum that Bourne, in particular, had offered to pay his dues directly but that he, Tucker, had not permitted Bourne to do so.

According to Tucker, Birnbaum's reaction, other than expressing some remorse for their plight, was to question Tucker closely as to whether he was sure the two employees would not sign cards and whether Tucker had spent time with them about it. The subsequent telephone call from Birnbaum to Rodriguez expressing his intent to fire the two, and the exit interview Rodriguez held with them during which they were terminated has been testified to by the affected employees and Rodriguez. Their testimony is entirely consistent with the request Tucker made of Birnbaum.

After Tucker learned he had made a mistake and called Birnbaum to request the employees' reinstatement, according to Tucker, Birnbaum admitted having made a fool of himself for having complied with Tucker's wrongful advice and reasoning.

As to Local 912's recognition by PBS, Tucker claimed to have approximately 17 signed authorization cards in his possession—all signed when the employees worked for Ferlin—when he met Birnbaum on October 28. When Birnbaum compared signatures that morning, he had 17 signed cards from Tucker, as against 20 signed employment applications. Among these signed cards were the seven or eight cards he had previously provided to Rodriguez to get signed and which Rodriguez brought to the meeting Tucker held with employees between October 1 and 28.

Elija McNeil, presently a porter employed by PBS at A. K. Houses, but previously a doorman employed by Ferlin, testified for Local 912 that he was present on October 1, when Vinny spoke and introduced Randy Tucker to the assembled employees. Vinny told the employees he could not represent them because he's from the Teamsters Union and they are party to the no-raiding pact, but Randy Tucker could represent them because his was an independent union. McNeil did not hear Vinny make any statement that if employees did not sign Local 912 authorization cards they would be terminated or any remarks concerning Hasidic Jews or that the Teamsters could represent them later. McNeil had previously signed a Local 912 card during the decertification campaign in 1991, and is presently a member.

In conflict with Tucker's testimony, McNeil recalled that Vinny and Randy stayed together during the whole meeting and Randy did not speak to employees individually during the meeting but only after it formally ended. McNeil could recall very little of what Vinny said and nothing of Randy's remarks at the meeting. He did deny that either spoke about job security or a new company coming in. Suprisingly, McNeil denied that either tried to persuade the employees to support Local 912 and they did not explain why they were there calling a meeting.

Later cross-examination established that McNeil was appointed a trustee of Local 912 in November, 1993 after requesting the appointment of Randy and appearing before the board of trustees. As a trustee McNeil expects to receive a reduction in the $30 monthly union dues.

McNeil finally admitted that because of side conversations in which he participated going on in the room, his attention wandered, and he did not hear everything being said at the meeting. Since he had already joined or decided to join 912, he had no reason to listen to reasons why he should join. Because of McNeil's admitted inattentiveness, I find that his testimony did not conflict with that of the employees who testified for General Counsel.

Sam Rodriguez, called as a witness by PBS, attended the October 1 meeting called by 912. Vinny introduced Randy who spoke to various employees in the crowd and handed out cards. Rodriguez could not recall anything said by Vinny other than his introduction of Tucker, questions were asked but he could not recall any specifics. Neither could he recall anyone say people could be fired or wouldn't be hired by a new company if they didn't sign cards for Local 912. Rodriguez himself collected some cards which employees gave him to hold onto and pass on to Tucker. On October 1, Tucker gave him some blank cards to distribute to employees who asked for them, and then gave them back to Tucker.

On November 2, Rodriguez acknowledged that he advised Bourne and Graham that they were terminated. Art Birnbaum had called him earlier that day to advise the two that they were terminated, to pull their timecards to the side and he would be up during the course of the day.

Rodriguez could not recall what specifically Birnbaum told him about Bourne and Graham, but it had something to do with their union dues. He knew that both employees had complained about not wanting to sign dues-deduction cards. Later, Rodriguez now testified that he told the two they were being fired either because they didn't sign payroll deduction cards for dues or because they didn't want to sign such cards.

Arthur Birnbaum testified for Respondent PBS that on October 27 at 3 p.m., accompanied by William McDuffy, director of operations, and John Ganley, another PBS executive he met with 20 to 25 Ferlin Manhattan facility employees. McDuffy said he would be in charge initially of operations. The employees were told that PBS would be taking over the maintenance contract on the buildings the next day, and those who wished to be employed by PBS should fill out the applications when distributed and bring them back tomorrow morning to start work. In answer to a quesion as to what they would be paid, Birnbaum said, ''We would stay with the same wages they were currently making. No other benefits, but wages.'' (Tr. 686.) Another person asked if we have no beneifts at all, and the PBS officials said, ''No. The only thing we are offering you is the same wages that you are currently making.'' Birnbaum testified he was unaware of what benefits the employees had been receiving.

The next day, between 10 and 10:30 a.m., Randy Tucker approached him in the maintenance office of 1775 Houses, said he had signed cards from most employees that were currently there, and he wanted to be recognized as the union. Present also was an off-duty police officer. Birnbaum left to telephone his office, got Mr. Francis who called him back after 15–20 minutes and told him to ''look at the cards, match them up with the applications, see if the signatures are the same, and if the majority is there, recognize them.'' Birnbaum went back to the management office, took the cards from Tucker, and matched the signatures against those on W-4 forms attached to the applications, counted 15 cards which was the majority of the 18 applications, and signed the proffered recognition agreement. All but two of the cards listed Ferlin as the employer; the remaining two were blank as to employer.

Birnbaum did not see any gathering of employees with Tucker thereafter on October 28. Birnbaum denied that his company supplied any materials or equipment for use by the newly employed PBS personnel on the sites, only the chemicals for cleaning. All other equipment and supplies, including plumbing supplies, heating supplies, physical equipment, sunblowers, floor machines, and vaccums were supplied by the ownership management company. There was no evidence offered that that company or the equipment and supplies previously provided Ferlin employees changed when PBS took over the maintenance contract.

Birnbaum confirmed that he received a telephone call from Kevin McCulloch of Local 32-BJ, during which McCulloch claimed they were part of a unit represented by Local 32-BJ and sought to meet to talk about a contract. After Birnbaum advised McCulloch of PBS' recent recognition of Local 912, based on cards, he could not recall, but did not

deny that McCulloch may have told him not to negotiate a contract with that union.

As to employees, Bourne and Graham, Birnbaum testified in conflict with Sam Rodriguez that he was first informed by Tucker to terminate the two for not paying dues, and then told Rodriguez to take their timecards out of the on-duty rack because he had to terminate them for not paying their dues. Previously, Bourne had told him he didn't want to pay union dues.

During his cross-examination by counsel for the General Counsel, Birnbaum was absolutely sure that Tucker advised him to discharge Bourne and Graham because they didn't pay their dues because he had asked and Tucker confirmed he was absolutely sure. Yet, before February 2, 1993, Birnbaum had heard Bourne say to him he wanted to and had offered to pay his dues by money order and Birnbaum's answer had been that's between you and the union.

In acceding to Tucker's request, Birnbaum did not check with Michael Francis, his superior, nor did he talk to Bourne or Graham before he had them fired.

After Tucker later told him he had received the wrong advice, they can pay by money order or check, he arranged from them to be reinstated on Monday, February 8.

E. *Facts and Conclusions Regarding the Supervisory Status of Sam Rodriguez*

I have previously summarized the testimony showing Rodriguez' role in the February 2, 1993 termination of employees Bourne and Graham. In acting for Birnbaum in removing their timecards from the active rack and informing them of their separation at the direction of Birnbaum, Rodriguez appears to have aligned himself with management in the eyes of those employees. As employee Graham answered when asked whether Sam Rodriguez ever disciplined him, ''only when he fired us.'' (Tr. 133.) Graham and Bourne were first notified that Sam wanted to see them. While Graham later acknowledged that Art called up and directed Sam to discharge them, it is evident that the two employees considered Rodriguez to have the apparent authority to impose discipline although directed to do so by higher authority. *Albertson's Inc*., 307 NLRB 787, 795 (1992), and *Toyota of Berkeley*, 306 NLRB 893 (1992).

It is also apparent from employee Ronald McKinney's testimony, that in attending his private grievance meeting with Randy Tucker and voicing sentiment against McKinney's reinstatement, Rodriguez was further aligning himself with and reinforcing management's position in opposing McKinney's reinstatement. McKinney also testified that while employed at Ferlin, Sam supervised his work to the extent of assigning him duties and reassigning him special duties, e.g., he wanted his floor cleaned all the time, pulling him off his work at the time, and bringing his failure or refusal to perform duties to the attention of the boss. When he was off work because of a son's illness, on his return he handed in a doctor's medical certificate to Sam, but was nonetheless denied pay for the leave. On this occasion, Rodriguez told McKinney, in the presence of Union Steward Bess, that although the leave was not approved in writing it would not count toward the three written warnings that could result in his being placed on probation or his discharge. In performing this role Rodriguez was acting for the employer in the adjustment of a grievance to the extent that McKinney was asserting a claim to pay for his absence. See *Hamburg Shirt Corp*., 156 NLRB 511 (1965).

Sam was also responsible for employees' timecards, arranging for recording of McKinney's workhours when he could not access his card because the office where they were stored was inaccessible. McKinney also sought permission from Rodriguez for time off from work.

According to Bourne, Rodriguez had an office at A. R. Houses, which was shared by Superintendent Daryl Williams. He received his work assignments from Sam and no one else. He saw Rodriguez perform payroll and paperwork in the office daily. He also performed porter or handyman work maybe twice a week for a half hour at a time. when asked about an onsite manager for PBS, above Rodriguez, Bourne, who continued to work for PBS from October 28, 1992, to May 28, 1993, when he quit, denied that there was such a manager, such as Mark Wilson or Gary Richardson, for the first 5 or 6 months of PBS' maintenance contract. There was no contrary testimony from Respondent.

Eastman confirmed that Rodriguez gave him his work assignments and also gave him permission to leave work early in an emergency. Eastman had been transferred to M. S. Houses in September 1992. At the time, the Superintendent from those buildings was out on disability. Sam Rodriguez, who had been running A. K. Houses, also took over M. S. Houses as the senior supervisor, a job which Rodriguez continued performing on the takeover by PBS on October 28. He basically ran everything after October 28. Rodriguez brought him his work tickets and told him what to do. He also checked to see if there was anything that had to be done in the building itself and was authorized to give Eastman these assignments. Eastman identified Mark Wilson as the overall supervisor for PBS at all its locations in New York. The worktickets were picked up by Rodriguez from the building management, the agents for the owner.

Samuel Rodriguez testified he was responsible for daily preventive maintenance covering the boilers, pumps, all mechanical equipment, interior and exterior lighting, hallways, property, grounds, and all other aspects of the property. He was also in charge of janitorial aspects of the buildings. He picks up daily service sheets or work tickets which are tenant generated requests for repairs and maintenance and at daily morning meetings with the two other superintendents for the four building complex comprising 1775 Houses, A. K. Houses, and M. S. Houses while retaining particular responsibility for A. K. building where he resides at 12 East 18th Street, as senior superintendent for all four, he distributes the work tickets among the superintendents.

In the course of making these assignments to himself, he also makes the decisions and issues instructions on priority as to which job is more urgent and requires immediate attention. With respect to those work tickets he retains, Rodriguez makes a further judgment as to whether to assign a particular job to the handyman in his particular building or to retain it for himself, and also hands out job tickets to the three porters in the building who normally have designated assigned work floors or areas. Rodriguez retained these responsibilities at these buildings at least for the 4-month period from October 1992 through January 1993. On all work ticket assignments Rodriguez is evaluating the work skills of the employees available to him in making assignments.

On an almost daily basis, Rodriguez transfers porters and handymen from one assignment and between buildings depending on the presence of emergencies which would periodically arise and his judgment as to their urgency and the number of handymen and porters available on any given day. Particular assignments aside from the work tickets are made by Rodriguez as a result of his early morning visual inspections of the buildings and grounds. On those occasions when an employee called in sick, Rodriguez would receive that information from the security office located at the 1775 building at 7 a.m. and would make adjustments in work assignments to cover certain existing conditions.

Frequently, on the average of once a week, the two other superintendents seek Rodriguez' advice on how to handle a particular problem. Rodriguez also maintains a list of temporary staff who he may call, generally in their order of having made written application for work, if there are at least two or three people out and there is a heavy workload, after first obtaining Birnbaum's permission. Rodriguez will normally seek permission to call three standby workers if he is short three employees. This appears to be a judgment which Rodriguez will make before seeking Birnbaum's approval, which appears to have been fairly automatic.

Rodriguez also retains his own records of hours worked by each employee to which he refers in cases of an error claimed by an employee of shortchanging by the employer. It appears that this record was reviewed by both Ferlin, and since October 28, 1992, by PBS in the person of Arthur Birnbaum when any question of work hours arises and even on a regular weekly basis, prior to Birnbaum's preparation of the final payroll.

With respect to discipline of employees, while Rodriguez denies having any authority in this area, he acknowledged he may have informed Ronald McKinney he was being discharged for tardiness and excessive absence.

Rodriguez has approved an employee working through lunch if he has to leave work early, say at 3 p.m. While he has not denied earlier leavings of employees during a workday, he will later inform Birnbaum of the facts regarding the employee's shorter workday.

When asked to name the people ''on his staff'' during the period from October 1992 to January 1993, Rodriguez listed 11 employees by name and then provided a total of 19 including himself.

Rodriguez' hourly pay rate for the period ending November 27, 1992, was $14.29, the same as the other superintendents. He also receives a rent free apartment and utilities. Handymen were paid $13.16 an hour and porters received $12.08. Rodriguez wears a uniform like other employees and his vote was not challenged in the decertification election.

Finally, Rodriguez engages in the preliminary screening process of new applicants for employment. He distributes employment applications, interviews them, including questioning applicants on their experience, and asks them to support their applications with appropriate documentation of licensing and the like. He acknowledges screening out those who don't have the requisite potential, providing Birnbaum with information about the surviving applicants at his request, and reviewing the applications with Birnbaum when an opening arises.

On the basis of the foregoing, I conclude that Rodriguez is a supervisor within the meaning of Section 2(11) of the Act. It is evident that Rodriguez has authority in the interest of the employer to responsibly direct employees, in the course of which he uses independent judgment. *Serendippity-Un-Ltd.*, 263 NLLRB 768, 771 fn. 4 (1982). *Van Pelt Fire Trucks*, 238 NLRB 794, 795–796 (1978). Thus, Rodriguez not only makes initial work assignments on the basis of his judgment of the priority and urgency of the maintenance problem either brought to his attention or which he locates on his early morning inspection, but he reassigns employees to other work duties within a particular building or between buildings when called for in his judgment, weighing staff availability, skills, and other factors. Rodriguez also approves early leaving and time off from work and advises on the severity of work infractions, to the extent that the employees affected are made aware of Rodriguez' status as a conduit of management, even though in so acting Rodriguez is following company rules and standards. Particularly, in informing Bourne and Graham of their terminations and in informing McKinney of his discharge and voicing disapproval of McKinney's reinstatement Rodriguez was clothed by PBS with the appearance of authority to act on its behalf in its dealings with employees. *Albertson's Inc.*, and *Toyota of Berkeley*, cited supra.

Rodriguez had adjusted a grievance on behalf of management when McKinley sought to avoid docking of his pay for an absence occasioned by his son's illness, by informing him in the presence of Union Steward Bess that while not compensated, the unauthorized leave would not count as a warning which could lead to his discharge. *Hamburg Shirt Corp.*, cited supra.

Rodriguez' authority exceeds that of the other building superintendents to the extent of his making assignments of work orders among the buildings and their staff at daily meetings with the other superintendents by distributing work tickets, and by resolving work-related disputes which the other superintendents brought to his attention. Rodriguez' characterization of himself as senior superintendent recognized by the company is thus fully warranted on this record.

In filling gaps in staffing, arising from absences of unit employees, Rodriguez appears to exercise some discretion in determining when, and under what circumstances, to call in standby workers for the day, after first informing Regional Vice President Birnbaum of his determination. On these occasions, Rodriguez' recommendations on staffing appear to have been invariably effective. It also appears that at all times material, Rodriguez retained a direct subordinate supervisor relationship with Birnbaum regarding all onsite day-to-day employee work-related matters, even after PBS assigned a managerial employee to oversee the Manhattan facilities some 6 months after the PBS takeover of the maintenance operations. Thus, at least during the first 6 months of its operations, and even thereafter, Rodriguez was the senior Company representative with direct day-to-day responsibilities for the maintenance function and personnel matters. *Serendippity-Un-Ltd.*, cited supra.

Finally, in apparently recognizing Rodriguez' judgment in resolving employee disputes involving work hours by virtue of his recordkeeping in this area and Birnbaum's weekly consultations with him before preparation of final payroll, Respondent PBS has further enhanced Rodriguez' role as a management conduit and figure of authority with employees.

In his preliminary screening out of applicants for employment who don't have the requisite potential, Rodriguez further evidences his authority on one important aspect of the hiring function.

F. *Credibility Resolutions*

Four employees testified to the threats made by Vinny Sombrotto at the October 1 meeting, and at least two of them testified to threats made by Randy Tucker at later meetings. While there are some differences among them as to the precise statements each of these individuals who addressed them made and the dates of the various meetings, I am impressed by the substantial corroboration each gave to the others in describing the nature of the solicitations Sombrotto and Tucker made in inducing employees to sign Local 912 authorization and dues-deduction cards. I also credit those employees who testified to Vinny's description of the new owners as Hasidic Jews and their supposed refusal to deal with Local 32-BJ. In particular, I credit Jared McNeil, McKinney, Bourne, and Eastman that Vinny told them that the new employer would not recognize or deal with Local 32-BJ and if they wanted to keep the jobs they had to sign Local 912 cards. Neither McNeil's later discharge for absenteeism McKinney's termination for tardiness and his subsequent fruitless attempts to secure Local 912's assistance in achieving reinstatement undermined their credibility. Although Bourne appeared to have problems in identifying and distinguishing Sombrotto from Tucker and in maintaining his composure and avoiding argumentative responses on cross-examination, I am convinced that Bourne was credible and the General Counsel and Charging Union counsel's effort to rehabilitate him on redirect examination, particularly by his identifying Tucker in the courtroom and by being refreshed as to the consistent statements he made in his pretrial affidavit, was successful.

Most impressive was McNeil's explanation that he signed the Local 912 card in order to keep his job. It is noteworthy that only one Respondent witness could possibly be said to have disputed the employees' consistent accusations against Vinny. Sombrotto himself was not called as a witness and Rodriguez vaguely testified that other than Vinny's introduction of Tucker, he could not recall any other remarks made by Tucker or by any employees in attendance. Neither could Tucker recall any statements made by Vinny as he allegedly moved around among the employees soliciting their support. Only employee Elija McNeil testified at one point that neither Vinny nor Randy spoke about job security at the October 1 meeting. But he testified earlier he did not hear Vinny threaten termination for failing to sign Local 912 cards. To the extent Elija McNeil denied the threats made by Vinny he is not credited. Elija McNeil could recall very little of the substance of the meeting and incredibly denied its purpose was to rally support for 912.

I found Eastman's presentation the most coherent and detailed of the 264 NLRB 1088 employee witnesses who testified. I credit him generally, and in particular that Tucker threatened company suspensions against anyone who associated with Local 32-BJ—this testimony was corroborated by McNeil and McKinney—and unspecified reprisals for providing statements to the Labor Board. I further credit Eastman that late in January 1993, Tucker responded to Bourne's expression of support for Local 32-BJ with the statement that if he did not sign the cards and deal with Local 912, he would be out of a job. McKinney, in particular, provided a credible presentation of the January meeting at which employees, including McNeil, Graham, Bourne, and even Steward Bess, objected to dues deduction from their pay and at which Graham expressed support for Local 32-BJ. McKinney corroborated Eastman in describing the twofold Tucker response, first, that support for Local 32-BJ could result in termination, and, second, that dues deduction from pay was required by law and was automatic.

Randy Tucker has previously been discredited regarding his denials of any threats he made to employees on Local 912 solicitations if they did not support or sign cards for Local 912 or maintained assistance to Local 32-BJ. Tucker is further discredited to the extent he denied in any respect that he sought the discharge of Bourne and Graham for failing or refusing to execute Local 912 dues-deduction cards. Bourne, Graham and even Rodriguez support the allegation of the complaint that it was the employees' refusal in this regard that led to Tucker's request for their discharge. The evidence is strong that Bourne, and even Graham, offered to pay dues directly by money order, and that Tucker refused their offer.

I further find, contrary to Arthur Birnbaum, that he was aware of Tucker's request, that he even expressed reluctance at complying with it, and sought to assure himself that every effort had been made by Tucker to secure the employees' signatures to the deduction form and that they were aware of the consequences for failing to authorize deduction. Birnbaum acknowledged he was aware that Bourne had previously offered to pay dues directly to 912. It also appears that the telephone conversation during which Tucker requested the employees' discharge was triggered by Birnbaum's inquiry of Tucker as to why Bourne's and Graham's names had not appeared on the Union's dues form it had submitted to PBS and their absence from this list became the focal point of Tucker's response and request for discharge.

I also find, in agreement with Eastman and Birnbaum, and contrary to other employee witnesses, that Birnbaum told Ferlin employees on October 27, that only their wages would remain the same, and that as to their other benefits, everything started fresh when PBS was to take over the following day. Jared McNeil's, Frank Graham's, and Jeffrey Bourne's recollections that Birnbaum told them on October 27 that everything was going to remain the same did not specifically address the benefits that the employees then enjoyed, and could easily have become confused in their minds with Birnbaum's offer to employ them all at the same buildings, and under the same schedules, working conditions, and wages.

Discussion and Analysis

The first question which arises is whether PBS constitutes a successor employer to Ferlin. If so, PBS had a duty to recognize and bargain with Local 32-BJ, the union which represented its predecessor's employees, which would not have been rebutted by the filing of the decertification petition, *Dresser Industries*, 264 NLRB 1088 (1982); *Radisson Plaza Minneapolis*, 307 NLRB 94 fn. 14 (1992).

I have already noted that PBS accepted every applicant previously employed by Ferlin, and that these employees constituted PBS's full work force on the day it commenced

operations. PBS assigned the same service functions, utilizing the same tools and equipment with the same immediate supervisory superintendents and other employees in the same job classifications at the same residential buildings and without any hiatus in operations. Normally, these facts and factors warrant the conclusion that PBS constitutes the successor to Ferlin as the employing entity for the Manhattan facilities. *NLRB v. Burns Security Services*, 406 U.S. 272 (1972); *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987).

Respondent PBS however, argues that because the unit for whose employees Local 32-BJ asserts exclusive bargaining status excludes five of the nine building units as well as the doormen employed in some of those buildings which comprised the unit in which Local 32-BJ had previously represented the predecessor Ferlin's employees, PBS cannot possibly be considered to be Ferlin's successor. The test to be applied in such situation in determining successorship is whether there is a substantial continuity in operations and the employees' job functions are ''essentially unaltered.''

In *Louis Pappas' Restaurant*, 275 NLRB 1519 (1985), the Board stated the following:

> [It is well established, however,] ''that the successorship obligations are not defeated by the mere fact that only a portion of a former union-represented operation is subject to the sale or transfer to a new owner, so long as the employees in the conveyed portion constitute a separate appropriate unit, and they comprise a majority of the unit under the new operation.'' [Quoting from *Stewart Granite Enterprises*, 255 NLRB 569, 573 (1981).]

The Board applied this principle in *Hydrolines, Inc*., 305 NLRB 416 (1991), *School Bus Services*, 312 NLRB 1 (1993), and *Steward Granite Enterprises*, 255 NLRB 569 (1981). In each of these cases, the successor employer, just like PBS, took over only a portion of the predecessor's operations and bargaining unit.

Under the instant facts, it is clear that the maintenance operation at the four Manhattan facilities, excluding the doormen, constitute an appropriate bargaining unit. The employees at these facilities also comprised not only the majority but the total complement of employees employed in the new operation. Thus, the principle enunciated in *Louis Pappas*, supra, should apply.

Respondent PBS argues nonetheless, that the removal of the doorman from the unit sufficiently fragments the unit so that it can no longer be deemed a successor without them. I have already noted that without the doorman, the remaining maintenance operation, complete in itself, is an appropriate bargaining unit. Further the complement of doormen, only 13 of whom were included in the prior unit, were employed at only 2 of the 4 Manhattan facilities. Thus, PBS' failure to employ them at all four facilities expanded an existing bargaining history at M. S. Houses and Los Tres Unidos and applied it now to A. K. Houses and 1775 Houses as well. With such a mixed prior bargaining history, the failure to employ doormen at two facilities cannot possibly destroy the substantial continuity in operations or have altered the nature of the job functions sufficiently to render PBS a nonsuccessor.

Even when the doormen were employed at A. K. Houses and 1775 Houses they were separately supervised and their numbers were related to the fact that they performed a 24-hour service rather than the normal workday maintenance function.

The cases cited by Respondent PBS in its brief for a contrary result are each distinguishable. In particular, in *Nova Services Co*., 213 NLRB 95 (1974), on which Respondent places great reliance, since the claimed successor employer did not even succeed to all of the janitorial work previously performed by the alleged predecessor at a particular bank, a competing enterprise having taken over much of the bank work all of which the alleged predecessor had previously performed, the facts differ greatly from those in the instant proceeding. Here, PBS succeeded to all of the maintenance functions and operations at the four Manhattan facilities and thus, even without the continuation of doormen at two of the four facilities, met the test of a substantial continuity in the employment enterprise. Similarly, in *Atlantic Technical Services Corp*., 202 NLRB 169 (1973), enfd. 498 F.2d 680 (D.C. Cir. 1974), the alleged successor took over only one of the functions of the predecessor at one site of a larger, multisite bargaining unit. In no way can the splintering of the unit in *Atlantic Technical Services*, in which only the mail and distribution services portion of a much larger general installation support services contract was assumed at the one site, be equated with PBS' assumption of all of the maintenance functions and operations under its service contract.

Having concluded that PBS was the successor to Ferlin in the employing enterprise, Local 32-BJ thus enjoyed a presumption of continuing majority status under its expired collective-bargaining agreement with the predecessor. *Burger Pits, Inc.*, 273 NLRB 1001 (1984).

Respondents assert, however, that Local 912's intervening demand to bargain destroyed that presumption, and allowed PBS to recognize and bargain to contract with Local 912.

I conclude that Local 912's claim to majority status was tainted from the very outset by the threats made by Vinny Sombrotto on October 1, and made thereafter by Randy Tucker in mid and late October and in November in their meetings with employees.

I have previously credited the various employees regarding the nature of Sombrotto's remarks and threats made at the October 1 meeting. Resondent Local 912 denies Sombrotto's status as its agent. It failed to file a posthearing brief on this defense. There is no quesiton that Tucker invited Sombretto to attend the meeting and introduced him to the Ferlin employees, some of whom had already participated in the decertification proceeding and who would also be in line to shortly become employees of Ferlin's successor. It was Sombrotto to whom a few influential employees had turned when they had initially sought help in removing Local 32-BJ as their bargining agent. Sombrotto had referred them to Tucker. Sombrotto and Tucker had developed a social relationship which also involved their union functions. It was now Sombrotto's role, as a friend and associate of Tucker's, to help Tucker's newly created Local 912 achieve employee allegiances at a crucial time when they were likely to become employed at the same buildings by a new maintenance contractor.

Neither Tucker nor Local 912 can avoid the conclusion that Sombrotto's presence, standing as a Teamsters' local of-

ficial, and role as chief speaker on behalf of Local 912 at a meeting 912 organized were all designed to convey to the employees Sombrotto's status as an individual actively supporting Local 912's efforts to succeed Local 32-BJ as their bargaining agent.

Accepting Sombrotto's assistance and permitting the employees to receive the distinct impression that Sombretto was speaking for, and with the approval of, Tucker and Local 912, is sufficient to establish Sombrotto as 912's agent. See *SMI of Worcester*, 271 NLRB 1508, 1521 (1984). Section 2(13) of the Act provides:

> In determining whether any person is acting as an ''agent'' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actual authorized or subsequently ratified shall not be controlling.

Thus, it is not necessary to establish that Tucker ''authorized or subsequently ratified'' Sombrotto's unlawful conduct in order to establish his agency. The courts liberal application of this definition to employers is equally applicable to unions. See *NLRB v. Arkansas-Louisiana Gas Co*., 333 F.2d 790, 795 (8th Cir. 1964). See also *Machinists v. NLRB*, 311 U.S. 72, 80 (1940). I however, also conclude that having taken advantage of Sombrotto's threats to solicit a number of authorization cards at the October 1 meeting, Tucker's and Local 912's failure to repudiate Sombrotto's threats is another significant reason why his conduct should be attributable to the Union. *NLRB v. Urban Telephone Corp*., 499 F.2d 239 (7th Cir. 1974).

By accepting Sombrotto's assistance and clothing him with the apparent authority to speak on its behalf, Sombretto's actions are attributable to and binding upon Local 912. *Sears Roebuck de Puerto Rico*, 284 NLRB 258 (1987); *Corrugated Partitions*, 275 NLRB 894, 900 (1985).

Sombrotto's comments were extremely coercive and designed to intimidate the employees into supporting Local 912 as the price of retaining their jobs. They clearly warrant the conclusion that they violated Section 8(b)(1)(A) of the Act. Furthermore they form a sufficient basis for concluding that all of the authorization cards individually solicited at that meeting by Tucker and which were either signed there or on later occasions were tainted and could not support a claim of majority status for Local 912, *Famous Castings Corp*., 301 NLRB 404, 408 (1991), and cases cited therein.

Randy Tucker's threats which he subsequently uttered, including company suspensions for any employees who associated with Local 32-BJ, and discharge if employees did not sign the cards and deal with Local 912, among others, as well as his threat of unspecified reprisals for providing statements to the Labor Board, also violated Section 8(b)(1)(A) of the Act.

A number of Tucker's threats were uttered by him at the meeting he held with employees on October 27, the day before presenting PBS with his bargaining demand. Any cards solicited and signed on this occasion were also clearly tainted.

Finally, by virtue of the conduct and activity of Superintendent Sam Rodriguez, who I have concluded is a supervisor under the Act, in circulating, soliciting, receiving, and returning signed cards to Local 912 which were included in its submission and PBS' count, those cards are also subject to a separate taint arising from the supervisor's conduct. *Reeves Bros.*, 277 NLRB 1568 fn. 1 (1986); *Sarah Neuman Nursing Home*, 270 NLRB 663 fn. 2 (1984). Removing the eight cards which Rodriguez procured alone reduces Local 912's card showing well below that necessary to show a majority in the unit. Tucker claimed he submitted 17 cards, but Birnbaum testified to receiving only 15; Tucker may have received 2 additional cards above the 15 offered while at the facility later that day. The unit consisted of either 18 as asserted by Birnbaum or 20 as claimed by Tucker. In either case, the seven remaining cards, after removing those procured by Rodriguez, are insufficient to establish a majority, even if Sombrotto's and Tucker's coercive acts are not considered.

Having thus rejected 912's majority claim, Local 32-BJ was entitled to recognition as exclusive bargaining representative by the successor and by its failure to recognize and bargain with Local 32-BJ, PBS has violated Section 8(a)(1) and (5) of the Act. See *NLRB v. Burns Security Services* and *Fall River Dyeing Corp. v. NLRB*, supra. Furthermore, by recognizing Local 912 and then executing and implementing the terms of its agreement with Local 912, and in the face of Local 32-BJ's agent's demands to the contrary, PBS has extended unlawful assistance to Local 912, in violation of the Act. Further, by including a union-security clause in its agreement with Local 912, and then enforcing that clause to the extent of terminating employees Bourne and Graham at Local 912's insistence, PBS has provided unlawful assistance to Local 912 in violation of Section 8(a)(2) and has also discriminated against its employees regarding their tenure of employment in violation of Section 8(a)(3) because of their unwillingness to pay dues to Local 912 pursuant to an unlawful union-security clause. By insisting on the two employees' discharge, for failure to comply with the terms of the unlawful clause, Local 912 has violated Section 8(b)(2) of the Act. Even if the clause was valid, because executed following a valid majority showing by Local 912, the Local 912's demand and PBS' compliance are unlawful because the Union never gave the two employees proper notice of their dues delinquency, including the amount of dues owed, the method by which the sum was calculated, and that they had until a reasonable date certain to pay before discharge. *NLRB v. Hotel Employees Local 568 (Philadelphia Sheraton Corp.)*, 320 F.2d 254 (3d Cir. 1963); *Helmsley-Spear, Inc*., 275 NLRB 262 (1985), and cases cited therein. Furthermore, even if the clause was valid, PBS had a duty to investigate whether Tucker's claim of failure to tender or pay dues was accurate. Birnbaum failed to make any inquiry even though he was aware in particular of Bourne's willingness to pay dues himself. Its failure to make such an investigation prior to the employees' discharge was itself independently a violation of Section 8(a)(3) and (1) of the Act. *Forsythe Hardwood Co*., 243 NLRB 1039 (1979); *Conductron Corp*., 183 NLRB 419 (1970).

Alternately, by demanding their discharge for failure to execute union dues-checkoff authorizations and without informing them in writing of the amounts of dues owed, Local 912, and, by acceding to this demand, PBS, have each independently violated Section 8(b)(2) and Section 8(a)(3) of the Act, respectively. Such a demand and resulting discharge for reasons other than the failure to tender the periodic dues and

initiation fees uniformly required as a condition of acquiring or retaining membership is clearly unlawful under the language of Section 8(b)(2).

By entering into and implementing the agreement with Local 912, as of December 1, PBS has also unilaterally modified the terms and conditions of employment of the unit employees, thereby violating Section 8(a)(5) and (1) of the Act. I also conclude that PBS violated the Act earlier on October 27, when it announced to the prospective employees, then employed by its predecessor, that as to benefits, they would be receiving the same wages, but that as to any other benefits they presently enjoyed, everything would be starting fresh the following day. I differ from counsel for the General Counsel who claims that Birnbaum was ambiguous in announcing which benefits would or would not be continued for the employees on the following day, while I found that Birnbaum did make clear that the only benefit being continued was their same level of wages. Nonetheless, the teaching of *Burns Security Services*, supra, is that Respondent PBS' conduct on this occasion constituted an unlawful implementation of unilateral terms. As the Supreme Court noted in *Burns*, 406 U.S. 272, at 294–295, ''although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms.'' I conclude that Birnbaum for PBS had determined to hire the full complement of Ferlin maintenance employees on October 27, merely requiring a single page written application form be submitted on their reporting the following day. That form was not reviewed and did not serve to weed out any of the returning staff before they commenced work on October 28 for PBS. It was accordingly obligatory on PBS that it consult Local 32-BJ before setting or implementing any terms or conditions of employment for the employees.

Furthermore, given the uncertainty which also apparently existed among the employees, evident from the testimony of a number of them, as to whether they would continue to receive their existing benefits, ''any uncertainty as to what Respondent would have done absent its unlawful purpose must be resolved against Respondent, since it cannot be permitted to benefit from its unlawful conduct.'' *Fremont Ford Sales*, 289 NLRB 1290 (1988) at 1297. See also *Worcester Mfg.*, 306 NLRB 218, 220 (1992). I therefore conclude that Respondent was not free to unilaterally set new terms of employment.

CONCLUSIONS OF LAW

1. Respondent Planned Building Services, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Local 912, United Commercial and Industrial Workers Union, and Local 32B-32J, Service Employees International Union, AFL–CIO are each a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All building service employees employed at A. K. Houses (112–126 East 128th Street, New York, N.Y.); 1775 Houses (107–129 East 126th Street and 290–2 Lexington Avenue, New York, N.Y.); 108 Tres Unidos (1680 Madison Avenue and 22 East 112th Street, New York, N.Y.); and M. S. Houses (107–123 East 129th Street, New York, N.Y.), excluding all office clerical employees, and guards, professional employees and supervisors as defined in the Act.

4. By granting recognition to Respondent Local 912 on October 28, 1992, and by entering into a collective-bargaining agreement with Respondent Local 912 on December 1, 1992, containing a union-security provision requiring employees to become members of and maintain membership in Respondent Local 912 as a condition of their employment with Respondent Planned Building Services, and by deducting moneys from employees' wages and remitting such moneys to Respondent Local 912 notwithstanding the absence of uncoerced employee authorizations for such deductions and remittances, all at times when Respondent Local 912 did not represent an uncoerced majority of employees in the unit described in paragraph 3, above, Respondent Planned Building Services has thereby unlawfully contributed support to a labor organization in violation of Section 8(a)(1) and (2) of the Act.

5. By terminating its employees Jeffrey Bourne and Frank Graham from February 2, until February 8, 1993, at the request of Respondent Local 912, because they refused to sign dues-checkoff authorization cards on behalf of Respondent Local 912, or alternatively, by terminating the aforesaid employees for the period described, at the request of Respondent Local 912, because they failed to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in Respondent Local 912 pursuant to the collective-bargaining agreement described in paragraph 4, above, or, because Respondent Planned Building Services had reason to believe that Respondent Local 912 demanded the employees' termination for reasons other than their failure to tender the periodic dues and initiation fees required as a condition of acquiring or retaining membership in Respondent Local 912 and that Respondent Local 912 had failed to provide adequate notice to these employees of the amounts that they owed, Respondent Planned Building Services has thereby unlawfully encouraged membership in a labor organization in violation of Section 8(a)(1), (2), and (3) of the Act.

6. By failing and refusing since October 30, 1992, to recognize and bargain with Local 32B-32J, SEIU as the exclusive collective-bargaining representative of its employees in the unit described in paragraph 3, above, and, since that date, by unilaterally modifying the terms and conditions of employment of the employees in the unit by unilaterally adopting initial terms and conditions of their employment and since December 1, 1992, by applying the terms of the collective-bargaining agreement it entered into with Respondent Local 912 to employees in the unit, Respondent Planned Building Services has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

7. By accepting exclusive recognition as the representative of Planned Building Services, Inc., employees in the unit at a time when it did not represent an uncoerced majority of the employees, Respondent Local 912 has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

8. By threatening employees that they could be discharged by Respondent Planned Building Services, Inc., if they did not sign cards for Respondent Local 912, by threatening employees with unspecified reprisals if they gave statements to or sought assistance from the National Labor Relations Board, and since December 1, 1992, by maintaining and enforcing with Respondent Planned Building Services, Inc., a collective-bargaining agreement containing a union-security provision requiring employees to become members of and maintain membership in Respondent Local 912 as a condition of their employment with Respondent Planned Building Services, Inc., and by accepting moneys deducted by Respondent Planned Building Services, Inc., from the wages of employees in the unit described in paragraph 3, above, notwithstanding the absence of uncoerced employee authorizations for such deductions and remittances, all at times when Respondent Local 912 did not represent an uncoerced majority of employees in the unit, Respondent Local 912 has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

9. By requesting that Respondent Planned Building Services, Inc. terminate its employees Jeffrey Bourne and Frank Graham because the employees failed to sign dues-checkoff authorizations and without giving employees written notice of the amounts owed in dues and initiation fees in order to acquire or retain their membership in Respondent Local 912, and by the discharge of the employees from February 2, to February 8, 1993, pursuant to Respondent Local 912's request, and at a time when it was not the lawfully recognized exclusive collective-bargaining representative of the employees in the unit described in paragraph 3, above, Respondent Local 912 has caused the Respondent Planned Building Services, Inc. to encourage its employees to join Respondent Local 912, and has thereby been attempting to cause, and causing, an employer to discriminate against its employees in violation of Section 8(a)(3) in violation of Section 8(b)(2) of the Act.

THE REMEDY

Having found that both Respondents engaged in unfair labor practices in violation of Section 8(a)(1), (2), (3), and (5) and Section 8(b)(1)(A) and (2), I shall recommend that they cease and desist therefrom and that they take the following affirmative actions which are necessary to effectuate the policies of the Act.

I shall recommend that PBS be ordered to cease and desist, inter alia, from assisting Local 912 by recognizing or bargaining with Local 912 with respect to the unit employees unless and until Local 912 has been certified by the Board; giving effect to the December 1, 1992 agreement with Local 912, or any extension or modification; making changes in wages, hours, or other terms and conditions of employment of unit employees without first giving notice and an opportunity to bargain to Local 32-BJ. I shall also recommend that PBS be ordered to cease discharging employees because they failed to sign union dues-deduction authorization cards or they failed to pay dues under a union-security clause invalid because based on a recognition of and agreement with a minority union; and cease deducting dues and fees from wages of employees for Local 912 under such an agreement.

Affirmatively, I shall recommend that PBS be ordered to recognize and bargain with Local 32-BJ as the exclusive representative of the unit employees; cancel the unilateral changes made in their terms and conditions of employment, reinstate those which prevailed immediately before October 28, 1992, and make whole all past and present employees for all lost earnings and benefits suffered as a result of such changes, provided nothing in the order requires the withdrawal or elimination of any wage increases or other benefits, terms or conditions of employment more favorable to employees under the December 1, 1992 agreement between PBS and Local 912; jointly and severally with Local 912 reimburse all past and present PBS employees for all initiation fees and dues paid by such employees to Local 912 pursuant to the collective-bargaining agreement effective December 1, 1992, between PBS and Local 912; jointly and severally with Local 912, make whole Jeffrey Bourne and Frank Graham for any loss of earnings and benefits they may have suffered by reason of the unlawful discrimination against them. All payments made to employees shall be computed in accordance with the method prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[3] Inasmuch as determination of the amounts due to fringe benefit funds, both in contributions and penalties, may be more difficult to compute, I will leave the determination of interest due on such payments to the compliance stage of this proceeding. *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

I shall also recommend that Local 912 be ordered to cease and desist from its unlawful conduct, and, affirmatively, that it be ordered to, jointly and severally with PBS, reimburse all past and present PBS employees for all initiation fees and dues paid by such employees to Local 912 pursuant to the collective-bargaining agreement effective December 1, 1992; and jointly and severally with PBS make whole Bourne and Graham, as described.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

A. The Respondent, Planned Building Services, Inc., Fairfield, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Assisting Local 912, United Commercial and Industrial Workers Union, or any other labor organization, by recognizing and bargaining with it as the representative of its em-

[3] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ployees for the purpose of collective bargaining, unless and until such labor organization has been certified by the National Labor Relations Board as the exclusive bargaining representative of any such employees.

(b) Maintaining and giving any force and effect to the collective-bargaining agreement with Local 912 which became effective December 1, 1992, or any extension or modification thereof, provided, however, that nothing in this order shall authorize or require the withdrawal or elimination of any wage increase or other benefits, terms, and conditions of employment more favorable to employees which may have been established pursuant to such agreement.

(c) Making changes in the wages, hours of work, or other terms and conditions of employment of unit employees without first giving notice to Local 32B-32J, Service Employees International Union, AFL–CIO of any such changes and affording it an opportunity to bargain about such changes.

(d) Discriminating against employees by encouraging membership in Local 912 or any other labor organization by discharging employees because they fail to sign dues-deduction authorization cards, or because they fail to pay dues under a union-security clause included in a collective-bargaining agreement with Local 912 or any other labor organization entered into based on recognition accorded at a time when such labor organization did not represent an uncoerced majority of its employees in an appropriate unit.

(e) Deducting union dues and fees from the wages of employees for Local 912 or any other labor organization under a dues-checkoff clause included in a bargaining agreement with Local 912 or any other labor organization entered into based on recognition accorded at a time when such labor organization did not represent an uncoerced majority of its employees in an appropriate unit.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with Local 32B-32J as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All building service employees employed at A. K. Houses (112-126 East 128th Street, New York, N.Y.); 1775 Houses (107–129 East 126th Street and 290–2 Lexington Avenue and 22 East 112th Street, New York, N.Y.); and M. S. Houses (107–123 East 129th Street, New York, N.Y.), excluding all office clerical employees, and guards, professional employees and supervisors as defined in the Act.

(b) On Local 32B-32J's request, cancel the unilateral changes made in the terms and conditions of employment of unit employees and reinstate the terms which prevailed in the unit immediately before October 28, 1992, and make whole all past and present employees for all lost earnings and benefits suffered as a result of such changes with interest, in the manner set forth in the remedy section in this decision, provided, however, that nothing in this order shall authorize or require the withdrawal or elimination of any wage increases or other benefits, terms, and conditions of employment more favorable to employees which may have been established pursuant to the bargaining agreement with Local 912 effective on December 1, 1992.

(c) Jointly and severally with Local 912 reimburse all past and present employees for all initiation fees and dues paid by such employees to Local 912 pursuant to the collective-bargaining agreement with Local 912 effective December 1, 1992, and jointly and severally with Local 912, make whole Jeffrey Bourne and Frank Graham for any loss of earnings and benefits they may have suffered by reason of the unlawful discrimination against them, plus interest for all such reimbursements and loss of earnings and benefits, in the manner set forth here in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of reimbursement of dues, other moneys, and backpay due under the terms of this Order.

(e) Post at its facilities in the Borough of Manhattan, City and State of New York, copies of the attached notice marked ''Appendix A.''[5] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Post at the same places and under the same conditions set forth in (e) above, as they are forwarded by the Regional Director, copies of Respondent Local 912's notice marked ''Appendix B.''

(g) Mail signed copies of the attached notice marked ''Appendix A'' for posting at Respondent Local 912's offices and meeting halls.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. The Respondent, Local 912, United Commercial and Industrial Workers Union, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting recognition from Planned Building Services, Inc. or any other employer and entering into and giving effect to collective-bargaining agreements, at a time when it does not represent an uncoerced majority of employees in an appropriate unit, including the agreement with Planned Building Services which was effective on December 1, 1992, and any extensions or modifications thereof.

(b) Agreeing to, maintaining, and enforcing a union-security provision requiring membership in Local 912 at a time when it does not represent an uncoerced majority of employees in an appropriate bargaining unit.

---

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

(c) Acting as the exclusive collective-bargaining representative of the employees in the unit of building service employees of Planned Building Services, Inc., employed in the Manhattan facilities, unless and until Respondent Local 912 has been certified by the National Labor Relations Board as the exclusive bargaining representative of such employees.

(d) Causing or attempting to cause Planned Building Services, Inc. or any other employer to discharge or otherwise discriminate against employees with respect to their tenure of employment or terms and conditions of employment based on such employees' failure to sign union-dues deduction authorization forms, or in an attempt to enforce the union-security provisons of any collective-bargaining agreement entered into based on recognition accorded at a time when Local 912 did not represent an uncoerced majority of employees of the employer in an appropriate unit.

(e) Accepting union dues paid by employees pursuant to the bargaining agreement with Planned Building Services Inc., effective December 1, 1992.

(f) Threatening employees with loss of employment or any other reprisals in an attempt to force them into signing membership or dues-deduction cards for Local 912, or to discourage them from giving statements to the National Labor Relations Board, or to discourage them from supporting or signing membership cards for Local 32B-32J or any other labor organization.

(g) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with Planned Building Services, Inc. reimburse all past and present PBS employees for all initiation fees and dues paid by such employees to Local 912 pursuant to the collective-bargaining agreement effective December 1, 1992, between Local 912 and PBS in the manner set forth in the remedy section of this decision.

(b) Jointly and severally with Planned Building Services, Inc., make whole Jeffrey Bourne and Frank Graham for lost earnings and benefits suffered as a result of the unlawful discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Post at its offices and meeting halls copies of the attached notice marked ''Appendix B.''[6] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, as they are forwarded by the Regional Director, copies of Respondent Planned Building Services, Inc.'s notice marked ''Appendix A.''

(e) Mail signed copies of the attached notice marked ''Appendix B'' to the Regional Director for posting at Respondent Planned Building Services, Inc.'s facilities in the Borough of Manhattan, City and State of New York.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relatons Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT accept recognition from Planned Building Services, Inc. or any other employer or enter into or give effect to collective-bargaining agreements, at a time when we do not represent an uncoerced majority of employees in an appropriate unit, including our agreement with Planned Building Services, Inc., effective December 1, 1992, and any extensions or modifications thereof.

WE WILL NOT agree to, maintain, and enforce a union-security provision requiring membership in our union at a time when we do not represent an uncoerced majority of employees in an appropriate bargaining unit.

WE WILL NOT act as the exclusive collective-bargaining representative of the unit of building service employees of Planned Building Services, Inc. unless and until we have been certified by the National Labor Relations Board as the exclusive bargaining representative of such employees.

WE WILL NOT cause or attempt to cause Planned Building Services or any other employer to discharge or otherwise discriminate against employees with respect to their tenure, or terms and conditions, of employment based on such employees' failure to sign union dues-deduction authorization forms, or in an attempt to enforce the union-security provisions of any collective-bargaining agreement entered into based on recognition accorded at a time when we did not represent an uncoerced majority of employees of the employer in an appropriate unit.

WE WILL NOT accept union dues paid by employees pursuant to our collective-bargaining agreement with Planned Building Services, Inc., effective December 1, 1992.

WE WILL NOT threaten employees with loss of employment or any other reprisals in an attempt to force them into signing membership or dues-deduction forms for Local 912, or to discourage them from giving statements to the National Labor Relations Board, or to discourage them from supporting or signing membership cards for Local 32B-32J, Service Employees International Union, AFL–CIO or any other labor organization.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, jointly and severally with Planned Building Services Inc., reimburse all past and present PBS employees for all initiation fees and dues paid by such employees to us

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

pursuant to our collective-bargaining agreement with PBS, effective December 1, 1992, plus interest.

WE WILL, jointly and severally with Planned Building Services, make whole Jeffrey Bourne and Frank Graham for lost earnings and benefits suffered as a result of our unlawful discrimination against them, plus interest.

LOCAL 912, UNITED COMMERCIAL AND INDUSTRIAL WORKERS UNION